

No. 37

In the Supreme Court of the United States

OCTOBER TERM, 1960

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,

Solicitor General,

Department of Justice, Washington 25, D.C.

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During the oral argument of this case on November 17, 1960, the question was raised as to whether or not a Congressional committee could initiate proceedings to compel the testimony of a witness under an immunity statute where the witness had invoked the privilege against self-incrimination under the Fifth Amendment.

1. The statute which authorizes the compelling of such testimony before a Congressional committee under a grant of immunity is set forth at 18 U.S.C. 3486. The pertinent portion of the statute is as follows:

§ 3486. *Compelled testimony tending to incriminate witnesses; immunity*

(a) In the course of any investigation relating to any interference with or endangering

of, or any plans or attempts to interfere with or endanger the national security or defense of the United States, by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witness shall be excused from testifying or from producing books, papers, or other evidence before either House, or before any committee of either House, or before any joint committee of the two Houses of Congress on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, when the record shows that—

(1) in the case of proceedings before one of the Houses of Congress, that a majority of the members present of that House; or

(2) in the case of proceedings before a committee, that two-thirds of the members of the full committee shall by affirmative vote have authorized such witness to be granted immunity under this section with respect to the transactions, matters, or things concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence by direction of the presiding officer and

that an order of the United States district court for the district wherein the inquiry is being carried on has been entered into the record requiring said person to testify or produce evidence. Such an order may be issued by a United States district court judge upon application by a duly authorized representative of the Congress or of the committee concerned.

But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecutions described in subsection (d) hereof) against him in any court.

(b) Neither House nor any committee thereof nor any joint committee of the two Houses of Congress shall grant immunity to any witness without first having notified the Attorney General of the United States of such action and thereafter having secured the approval of the United States district court for the district wherein such inquiry is being held. The Attorney General of the United States shall be notified of the time of each proposed application to the United States district court and shall be given the opportunity to be heard with respect thereto prior to the entrance into the record of the order of the district court.

(d) No witness shall be exempt under the provision of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section. [As amended Aug. 20, 1954, c. 769, § 1, 68 Stat. 745.]

Subsection (c) of Section 3486 relates to the authorization of the Attorney General to request a court order compelling testimony under a grant of

immunity in connection with a criminal case—the provision involved in *Ullmann v. United States*, 350 U.S. 422.¹

2. During the hearings which were conducted by the House Committee on Un-American Activities in Atlanta, Georgia, on July 29, 30, and 31, 1958—the hearings involved in *Braden*, No. 54, this Term, and in this case—the following colloquy took place during the interrogation of witness Jerome Van Camp (R. 185 in *Wilkinson*):

Mr. ARENS. Are you right now, today, a member of the Communist Party?

Mr. VAN CAMP. I refuse to answer on the same basis. [First and Fifth Amendments.]

Mr. ARENS. Have you ever quit the Communist Party?

Mr. VAN CAMP. I refuse to answer on the same basis.

Mr. ARENS. This Committee on Un-American Activities, young man—and you still are a very young man—

Mr. VAN CAMP. Yes, sir.

Mr. ARENS. —can recommend that immunity be granted from any criminal prosecution to certain people. I would like to ask you this: If this committee should cause to be instituted proceedings to grant you immunity so that you could not be prosecuted criminally for information developed by your own testimony, and if those proceedings should be brought to a fruition in the processes prescribed by the law

¹ This Court, in *Ullmann*, did not reach or pass upon the validity of the congressional portions of Section 3486. See 350 U.S. at 431-432. Cf. the discussion in the District Court's opinion, *In Re Ullmann*, 128 F. Supp. 617, 624-628 (S.D.N.Y.).

so that you could come clean and face your parents, face your employers, and face other citizens of this country and tell all about what you know about the Communist operation as a young man, about the Communist attempts to penetrate the industrial areas of the South, about the way Communists seize hold of the minds of young people whom they can grab up in schools and colleges and the like, would you, if you had that immunity, would you break completely with this operation and accept this immunity and tell this committee while you are under oath all you know from your personal experience about the Communist Party and the Communist operation in this country? (The witness conferred with his counsel.)

Mr. VAN CAMP. Would you repeat that question? Was that a question or—I took it as a speech. Make it simpler, please.

Mr. WILLIS. I think he is not the material we hoped he might be.

Mr. ARENS. We hoped, young man, you might want to break from the operation and testify while you are still young, while you still have an opportunity to be of service to your country.

Mr. VAN CAMP. Is that a question?

Mr. ARENS. And, in the process, to be clean—just an observation.

Mr. VAN CAMP. Thank you.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

NOVEMBER 1960.